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SOL (MSHA) V. POLLARD SAND
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. SE 85-1-M
A.C. No. 01-02168-05505

v.

Pollard Sand and Gravel Mine

POLLARD SAND COMPANY,
RESPONDENT

DEFAULT DECISION

Before: Judge Koutras

Statement of the Case

This case concerns a proposal for assessment of civil penalty filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a). Petitioner seeks a civil penalty assessment in the amount of \$500 for an alleged violation of mandatory safety standard 30 C.F.R. 56.9Å3, as stated in a section 104(a) "S & S" Citation No. 2244781, served on the respondent by an MSHA inspector on June 28, 1984.

The respondent filed a timely answer contesting the alleged violation, and the case was scheduled for hearing in Birmingham, Alabama, on July 16, 1986. Subsequent to the issuance of the hearing notice, the respondent's owner and operator Ronnie Pollard advised me by letter received May 9, 1986, that he is out of business and no longer in operation, and that all of his business assets have been disbursed to pay his business obligations. Mr. Pollard further advised that he did not intend to attend the scheduled hearing because "I am no longer in business and have no connection with any corporation under your jurisdiction."

In view of the respondent's position in this matter, I issued an Order to Show Cause on May 23, 1986, requiring the parties to state why the respondent should not be declared in

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default and a summary order entered pursuant to Commission Rule 63, 29 C.F.R. 2700.63, assessing the proposed civil penalty of \$500 as final, and directing that such penalty be paid. The petitioner responded within the 15 day time limit, and agreed that the respondent may be declared in default. The respondent failed to reply to my show cause order.

Conclusion

The respondent has been given an ample opportunity to refute and defend the alleged violation and proposed civil penalty filed by the petitioner. It seems obvious to me that the respondent does not wish to litigate this matter further because he is out of business, and he has failed to respond to my show cause order. Under the circumstances, I conclude and find that the respondent is in default, and that a summary order pursuant to 29 C.F.R. 2700.63, is appropriate under the circumstances of this case.

ORDER

Judgment by default is entered in favor of the petitioner, and I assess the proposed civil penalty assessment of \$500 for the violation in question as the final assessment in this matter. The respondent IS ORDERED to pay the final civil penalty assessment of \$500, to the petitioner within thirty (30) days of the date of this decision and order. The scheduled hearing is cancelled.

George A. Koutras
Administrative Law Judge